

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE and MEHDI
OSTADHASSAN on behalf of themselves
and others similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the
United States; UNITED STATES
CITIZENSHIP AND IMMIGRATION
SERVICES; JOHN F. KELLY, in his
official capacity as Secretary of the U.S.
Department of Homeland Security; LORI
SCIALABBA, in her official capacity as
Acting Director of the U.S. Citizenship and
Immigration Services; MATTHEW D.
EMRICH, in his official capacity as
Associate Director of the Fraud Detection
and National Security Directorate of the
U.S. Citizenship and Immigration Services;
DANIEL RENAUD, in his official
capacity as Associate Director of the Field
Operations Directorate of the U.S.
Citizenship and Immigration Services,

Defendants.

No. 17-cv-00094 JCC

**DECLARATION OF STACY TOLCHIN
IN SUPPORT OF PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

Stacy Tolchin declares as follows:

1. I am one of the attorneys representing plaintiffs in this case. I have personal
knowledge of the facts set forth in this Declaration and I am competent to testify.

DECLARATION OF STACY TOLCHIN
(No. 17-cv-00094 JCC) – 1

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2. I am an attorney licensed to practice by the State of California, and am admitted to practice before the United States Supreme Court; the United States Court of Appeals for the Ninth, Tenth, Fifth, and Second Circuits; and the United States District Courts for the Northern District of California, Eastern District of California, Central District of California, Southern District of California, and District of New Mexico. I am counsel of record for Plaintiffs in this case. I have personal knowledge of the facts set forth herein and am competent to testify thereto.

3. My business address is Law Offices of Stacy Tolchin, 634 S. Spring St. Suite 500A, Los Angeles, California 90014.

4. I received my Juris Doctorate from the University of California at Los Angeles in 2001, and have been practicing law for over 15 years.

5. I am a recipient of the 2009 American Immigration Lawyers Association's Jack Wasserman Award for Excellence in Immigration Litigation, the 2009 American Civil Liberties Union of Southern California Equal Justice Advocacy Award, the 2008 National Immigration Law Center Annual Award, and the 2007 "Unsung Hero" Award for the National Lawyers Guild of the Bay Area. I was recognized in 2003 by the Arab-American Anti-Discrimination Committee of San Francisco, and have also been named to "Super Lawyers" from 2012-2017.

6. I am a member of the Board of Directors of the National Immigration Project for the National Lawyers Guild, a former member of the Ninth Circuit Rules Committee, a member of the National Lawyers Guild, the Los Angeles County Bar Association Immigration Law Section, and the American Immigration Lawyers Association.

7. I specialize in immigration-related litigation before the federal courts. Published cases I have litigated include: *Bonilla v. Lynch*, 840 F.3d 575 (9th Cir. 2016) (finding jurisdiction to review legal issues underlying denials of motions to *sua sponte* reopen); *Gastelum Chavez v. Lynch*, No. CV147566 DMG AGRX, 2016 WL 4402795 (C.D. Cal. Aug. 16, 2016) (declaring petitioner to have acquired United States citizenship after full bench trial) (appeal pending); *Menendez-Gonzalez v. Holder*, 597 F. App'x 435 (9th Cir. 2015) (successful petition for review

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1 challenging Board of Immigration Appeals’ failure to reopen deportation order after conviction
 2 was vacated); *Mendiola v. Holder*, 576 F. App’x 828 (10th Cir. 2014) (petition for review
 3 challenging removal of a lawful permanent resident based on change in law); *Bains v. Holder*,
 4 584 F. App’x 574 (9th Cir. 2014) (petition for review challenging removal order based on
 5 changed circumstances arising in India); *Huerta v. Holder*, 484 F. App’x 172 (9th Cir. 2012)
 6 (petition for review based on ineffective assistance of counsel); *Padilla-Padilla v. Gonzales*, 463
 7 F.3d 972 (9th Cir. 2006) (challenge to Board of Immigration Appeals’ failure to follow its
 8 internal regulations); *Silaya v. Mukasey*, 524 F.3d 1066 (9th Cir. 2008) (finding that victim of
 9 gang-rape in the Philippines had suffered past persecution based on her father’s political
 10 opinion); *Hushev v. Mukasey*, 528 F.3d 1172 (9th Cir. 2008) (finding that courts have jurisdiction
 11 to review agency’s failure to follow asylum regulations); *Hassine v. Johnson*, 2014 WL 5035173
 12 (E.D. Cal. 2014) (prevailing on petition for *de novo* naturalization case and award of attorneys’
 13 fees); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (finding “automatic stay”
 14 regulation that keeps non-citizens in custody while their immigration cases are pending, even
 15 after an immigration judge has ordered their release, is facially unconstitutional); *Singh v. Still*,
 16 470 F. Supp. 2d 1064 (N.D. Cal. 2007) (successful petition for writ of mandamus challenging
 17 agency’s unreasonable delay in the adjudication of applications for permanent residency);
 18 *Shahwan v. Chertoff*, C 05 4218 MMC (N.D. Cal. 2005) (granting habeas petition where
 19 petitioner was not informed when he traveled on “advance parole” that he would be ineligible for
 20 a bond hearing before an immigration judge); and *Araujo v. INS*, 301 F. Supp. 2d 1095 (N.D.
 21 Cal. 2004) (finding the United States liable for damages to a non-citizen for unlawful
 22 deportation).

23 8. I also have class action litigation experience. *See Duran Gonzales v. U.S.*
 24 *Department of Homeland Sec.*, 712 F.3d 1271 (9th Cir. 2013) (circuit-wide certification); *Brown*
 25 *v. U.S. Customs and Border Protection*, No. 3:15-cv-01181-JD (N.D. Cal. 2015) (settled prior to
 26 decision on certification).

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1 9. I am very familiar with the Controlled Application Review and Resolution
2 Program (“CARRP”). I have or had at least ten clients who are or were subject to CARRP, and
3 who are not named plaintiffs in this case. These clients are or were applying for immigration
4 benefits such as lawful permanent residency, naturalization, and are subject to visa petitions. In
5 all of these cases, I believe that U.S. Citizenship and Immigration Services (USCIS) applied
6 heightened and unlawful standards to the adjudication of the applications which, based on my
7 15 years of practicing immigration law, would not have been applied to a benefits application
8 that was not subjected to CARRP.

9 10. I believe these individuals’ applications were subjected to CARRP because they
10 all had been approached for interviews by the Federal Bureau of Investigation. Some had
11 information in their immigration file, such as the term “SSSS,” which led me to believe they
12 were also on the government’s “no-fly list.”

13 11. To my knowledge, USCIS subjected these cases to CARRP despite the fact that I
14 am aware of no evidence that my clients have any direct involvement with national security
15 concerns. Rather, they likely became subject to CARRP due solely to some tangential
16 connection to someone else or other vague reasons. For instance, one client happened to attend a
17 mosque where an Imam was removed based on national security concerns, but there was never
18 any allegation that my client was a security concern. Another client was part of a Muslim
19 student activist group in college that was engaged in political speech and was never alleged to be
20 a security concern. Two other clients are Iranian and are engineers, which I believe are
21 characteristics which caused USCIS to subject them to CARRP. Two other clients were active
22 speakers in their mosques, though neither the mosques nor the clients are alleged to be national
23 security concerns. Multiple clients were approached by the FBI and were requested to cooperate
24 with law enforcement against members of their religious community; when they declined to do
25 so, they experienced delays and pretextual denials in their applications for residency and
26 naturalization.

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13. Neither I nor the Law Offices of Stacy Tolchin are receiving reimbursement from any individual plaintiff in this case. Together with co-counsel, I will fairly and adequately protect the interests of the individual plaintiffs and the proposed classes and possess the commitment and resources to prosecute the case as a class action

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 9th day of February, 2017, at Los Angeles, California.

/s/ Stacy Tolchin
Stacy Tolchin

CERTIFICATE OF SERVICE

The undersigned certifies that on the dated indicated below, I caused service of the foregoing DECLARATION OF STACY TOLCHIN, IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

via the CM/ECF system that will automatically send notice of such filing to all counsel of record herein.

DATED this 9th day of February 2017, at Seattle, Washington.

By: s/ David A. Perez
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DECLARATION OF STACY TOLCHIN
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